

**FINDINGS AND RECOMMENDATION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Application of

CF 308884

SEATTLE CHILDREN'S HOSPITAL

for approval of a Major Institution Master Plan

Introduction

Children's Hospital applied for approval of a new Major Institution Master Plan. On March 2, 3, 4, 5, 6, and 10, 2009, the Hearing Examiner (Examiner) held a consolidated hearing on the proposed Major Institution Master Plan (MIMP) and an appeal of the Final Environmental Impact Statement (FEIS). The Examiner issued a decision concluding that the FEIS was inadequate in its analysis of the proposal's impacts on existing land use plans, and failed to provide the requisite information on the scope and details of the impact of demolishing 136 units of housing at Laurelon Terrace. The Examiner reversed the Director's determination of adequacy and remanded the Master Plan to the Director for reconsideration. MUP-08-035(W).

The Director of the Department of Planning and Development (Director) issued a Revised Final Environmental Impact Statement (RFEIS), which was limited to land use and housing impacts, and a Revised Analysis, Recommendation and Determination on the Master Plan reaffirming her prior recommendation on the Master Plan with revisions to three recommended conditions of approval. Laurelhurst Community Club appealed the RFEIS.

A second consolidated hearing on the MIMP and the RFEIS appeal was held on July 14, and 15, 2009. The Appellant, Laurelhurst Community Club (LCC), was represented by Peter J. Eglick, attorney-at-law; the Applicant, Seattle Children's Hospital (Children's), was represented by John E. Keegan, attorney-at-law; and the Director of the Department of Planning and Development (Director) was represented by Judith B. Barbour, Assistant City Attorney. Laurelon Terrace Condominium, which was granted limited intervenor status under Hearing Examiner Rule 3.09(d), was represented by Peter L. Buck, attorney-at-law. Laurelon Terrace Condominium and Laurelhurst Community Club were each given the opportunity for reasonable cross-examination of witnesses who testified as experts on the MIMP. The Citizens Advisory Committee (CAC) was represented by Karen Wolf, Chair, and Catherine Hennings, Vice-chair. Mike Wayte presented a summary of the CAC minority reports. The record was held open until July 21, 2009 for post-hearing submittals by the parties. In a separate decision, the Hearing Examiner affirmed the Director's determination that the EIS was adequate. MUP-09-015(W).

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For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. Exhibits from the first hearing are referred to by number; exhibits from the second hearing, following the remand, are referred to by an R- followed by a number.

The Director's report, Exhibit 9, includes discussion of proposed MIMP relative to the extensive detail of the Master Plan Code. Like Hearing Examiner recommendations on prior Children's Master Plans, this recommendation focuses on the major areas of controversy surrounding the proposed MIMP.

Having considered the evidence in the file and visited the site, the Examiner enters the following findings of fact, conclusions and recommendation on this application:

Findings of Fact

Background

1. Seattle Children's Hospital (Children's) is an academic medical center that provides highly specialized pediatric and adolescent health care services to children throughout the Northwest through integrated diagnostic and therapeutic services provided by specialists in multiple disciplines.
2. Children's "bed mix" includes separate neonatal, pediatric; and cardiac intensive care units; an inpatient psychiatric unit; a rehabilitation and complex care unit; a Seattle Cancer Care Alliance unit; a surgical unit; and a medical unit.
3. Children's population includes patients (from premature newborns to 21 years of age); hospital employees; physicians, students and residents; and visitors.

Site and Vicinity

4. Children's Laurelhurst campus within the existing Major Institution Overlay (MIO) is located on approximately 21.7 acres at 4800 Sand Point Way Northeast in north Seattle. Laurelhurst has not been designated as an urban center or village. The closest urban center or village is the Ravenna portion of the University Community Urban Center located approximately one-half mile away.
5. The Children's campus slopes down from east to west and from north to south. The site is bounded on the northwest by Sand Point Way Northeast; on the north by Northeast 50th Street; on the east by 44th Avenue Northeast (from Northeast 50th Street to Northeast 47th Street) and by 45th Avenue Northeast (from Northeast 47th Street to Northeast 45th Street); on the south by Northeast 45th Street; and on the west by a shared property line with the Laurelon Terrace Condominium community.
6. The underlying zoning for Children's is Single-family 5000 (SF-5000). The neighborhood to the east and south is also zoned SF 5000, with a 30 foot height limit, and

is developed with single-family residences. The area to north is zoned Lowrise Duplex/Triplex, with a 25-foot height limit, and is developed with low density multifamily residences. The area to the northwest is zoned Lowrise 3 (L3) with a 30-foot height limit and is also developed with low density multifamily residences. The area to the west is also zoned L3, and is developed with the Laurelon Terrace Condominiums, a seven-acre, two- and three-story garden-style community built in the 1940s. To the west and southwest of Laurelon Terrace is L3-zoned property developed with low density multifamily residences, and then a strip of property along Sand Point Way that is zoned Neighborhood Commercial 2 with a 30-foot height limit (NC2-30) and developed with the Springbrook professional buildings and a bank. L3 zoning and development continues across Sand Point Way, with the exception of the nonconforming one-story medical office use in the Hartmann Building. To the south of the Hartmann site is Neighborhood Commercial 2 zoning with a 40 foot height limit (NC2-40) developed with a nonconforming 100-foot-high condominium building. Further to the west is the Burke-Gilman Trail, and then the Bryant neighborhood with SF-5000 zoning and development. See Exhibit 4 (Final Master Plan) at 63, Figure 45.

7. Retail/commercial businesses, including University Village, QFC and Safeway, the Virginia Mason Pediatric Clinic, the Springbrook buildings, and smaller specialty businesses, are located primarily to the southwest of Children's. Several institutions are also located nearby, including Children's 70th and Sand Point Way facility, the Talaris Research and Conference Center at Northeast 41st Street, Laurelhurst Elementary School and Villa Academy to the east, and the University of Washington less than one mile to the southwest.

Current Major Institution Overlay

8. Children's Laurelhurst campus is located within an existing MIO under a MIMP approved in 1994. Existing facilities include a hospital with 250 beds (230 of which are acute care) in 200 patient rooms, a clinic, and clinical research, office and laboratory space, for a total building area within the MIO of 900,000 square feet. In addition, Children's maintains an existing clinic and office at the Hartmann Building on the west side of Sand Point Way. Children's owns the 1.7 acre Hartmann site and the 16,228 square foot Hartmann Building. Children's has a partnership interest in the Springbrook buildings at Northeast 45th Street and Sand Point Way and leases 6,700 square feet in those buildings. Both Hartmann and Springbrook are located outside, but within 2,500 square feet of the existing MIO. Children's also owns nine single-family residences located across from its east and south boundaries that it purchased in 2007 and 2008. Exhibit 22, Attachment G.

9. Primary access to Children's is via the Northeast 45th Street corridor (Sand Point Way Northeast and Northeast 45th Street to Interstate 5), or via the Montlake Boulevard corridor (Sand Point Way Northeast and Montlake Boulevard Northeast to SR 520). Approximately 50% of Children's employees travel one of these corridors to reach Children's. The campus itself is accessed via Penny Drive from Sand Point Way. Three King County Metro bus stops are located on or adjacent to the campus.

10. Children's provides a total of 2,182 parking stalls, including 80 surface stalls at the Hartmann Building and 640 off-campus leased stalls.

11. MIO height districts are 37 feet north of Penny Drive, and 37, 50, 70 and 90 feet south of Penny Drive. Part of the 90-foot height district is conditioned to 74 feet plus mechanical, and part of the 70-foot height district is conditioned to 64 feet. Setbacks are approximately 20 feet on the north, 40 feet on the west and a portion of the east, and 75 feet on the south and a portion of the east. Many of the setbacks are heavily landscaped to screen the campus from the surrounding neighborhood.

12. Children's has completed most of the development approved in its existing MIMP, with approximately 54,000 gross square feet of unbuilt area remaining.

13. Children's has relocated its research facilities away from the hospital campus and established pediatric specialty care at regional clinics in Alaska, Montana and many cities within Washington. It is also working with community providers to increase the availability of pediatric specialty care services within the area.

Master Plan Process

14. The Master Plan process began in the spring of 2007, when Children's submitted a notice of intent to prepare a new Master Plan. The Citizens Advisory Committee (CAC) was formed and first met in July of 2007. The Draft Master Plan was submitted and a draft EIS was issued on June 9, 2008. Exhibits 3 and 5. Public review during development of the Master Plan and draft EIS included public meetings of the CAC, which included time for public comment; a public scoping meeting; two public comment periods; and a public hearing. The Final Master Plan and FEIS were issued on November 10, 2008. Exhibits 4 and 6. The Director's Report and Recommendation was issued on January 20, 2009. Exhibit 9.

15. The CAC, staffed by the Department of Neighborhoods, held 26 public meetings over a period of 18 months. They received 248 public comments, and reviewed and commented on draft Master Plan and SEPA documents. The CAC was instrumental in achieving many changes to the Master Plan that would reduce the proposed MIMP's impact on the surrounding neighborhood. The CAC's Final Report and Recommendation, and six Minority Reports from 13 CAC members, were issued on February 3, 2009. Exhibit 8.

Public Comment

16. The Director received approximately 600 written comments on the Master Plan and EIS, and heard from 66 people at the Director's 2008 public hearing. The Examiner received 153 public comments, and heard testimony from 65 members of the public at the Examiner's two public hearings.

Proposed Master Plan

17. Children's has applied for a new MIMP to establish development potential through the year 2030. The MIMP would remain in place until Children's constructs the allowed developable square footage. The objectives of Children's proposed MIMP are stated in the Draft Master Plan, Exhibit 3 at 27, and are summarized in the Director's Report, Exhibit 9 at 9.

18. Children's Final MIMP includes the three required components under SMC 23.69.030: (1) a development program; (2) development standards; and (3) a transportation management program.

19. Details of Children's proposed development program are found at pages 17-73 of the proposed MIMP, Exhibit 4.

20. Children's explored seven alternatives that would have achieved its objective of obtaining a total of 2.4 million square feet of development area. The alternatives are described in detail in Exhibit 6 at 2-7 to 2-33, and in Exhibit 4 at 20-23.

21. Children's selected Alternative 7R as its preferred alternative. It seeks to expand the MIO boundary to include the existing Laurelon Terrace Condominiums to the west, and the existing Hartmann site across Sand Point Way. Children's has purchased 101 of the Laurelon Terrace Condominium units and holds an option to purchase the entire 136-unit complex. Children's owns the Hartmann site, as noted above, and proposes to construct 150,000 square feet of development and 225 parking spaces on it.

22. Laurelon Terrace and certain existing campus buildings would be demolished, and development under the proposed MIMP would occur in four phases. The timing for the phases remains an estimate. Phase 1 is designated "planned development;" Phases 2, 3 and 4 are designated "potential development". See Exhibit 4 at 66-68; Exhibit 6 at 2-22 to 2-30.

23. The Phase 1 building, with some floors below or partially below grade, would be 142.5 feet high, although Children's has proposed limiting it to 140 feet plus mechanical penthouse. At the conclusion of Phase 1, total building area would be expanded to approximately 1,492,000 square feet. Phase 1 is expected to occur between 2010 and 2012, and would include:

- Demolition and removal of the existing Laurelon Terrace buildings
- Construction of a new Emergency Department (93,527 square feet)
- Construction of Bed Units 1 and 2 (258,800 square feet)
- Construction of diagnostic and treatment facilities (176,343 square feet)
- Construction of mechanical facilities (49,400 square feet)
- Construction of a mechanical penthouse (14,000 square feet)

24. Phase 2 would expand total building area to approximately 1,754,000 square feet, and is expected to occur from the fourth quarter of 2013 to the fourth quarter of 2016. It would include:

- Demolition and reconstruction of the Hartmann Building
- Construction of a 255 stall below-grade garage on the Hartmann site
- Construction of a 1,100 stall, 4- to 5- story garage for staff at the south end of the Laurelon Terrace site
- Construction of additional diagnostic, treatment, and ancillary, mechanical and general plant facilities

25. Phase 3 is expected to occur in two sub-phases and would expand total building area to approximately 2,210,000 square feet: Sub-phase 3A from the second quarter of 2017 to the fourth quarter of 2019; and Sub-phase 3B from the first quarter of 2022 to the fourth quarter of 2024. Phase 3 would include:

- Construction of Bed Units 3 and 4
- Construction of diagnostic, treatment, and ancillary, mechanical and general plant facilities

26. Phase 4 would expand total building area to approximately 2,357,000 square feet and is expected to occur from the fourth-quarter of 2025 to the fourth-quarter of 2027. It would include:

- Demolition of the Giraffe Garage on the northwest portion of the campus
- Construction of a new North Garage, offices, and ancillary, mechanical and general plant facilities on the north part of the property

27. The net increase in building area over the life of the MIMP would be 1.5 million square feet, with a total building area for the completed campus of approximately 2.4 million square feet, 167% larger than Children's existing facilities. The net increase in beds would be 250 to 350, for a total bed count of 500 to 600.

28. The proposed MIMP would require vacation of streets within the Laurelon Terrace site, 41st Avenue Northeast and Northeast 46th Street between Sand Point Way and 40th Avenue Northeast.

Major Areas of Controversy

Need and Public Benefit

29. SMC 23.69.002 states that the purpose and intent of the Major Institution Code is to:

A. Permit appropriate institutional growth within boundaries while minimizing the adverse impacts associated with development and geographic expansion;

B. Balance the Major Institution's ability to change and the public benefit derived from change with the need to protect the livability and vitality of adjacent neighborhoods;

C. Encourage the concentration of Major Institution development on existing campuses, or alternatively, the decentralization of such uses to locations more than two thousand five hundred (2500) feet from campus boundaries;

....
E. Discourage the expansion of established major institution boundaries;

....
H. Accommodate the changing needs of major institutions, provide flexibility for development and encourage a high quality environment through modifications of use restrictions and parking requirements of the underlying zoning;

I. Make the need for appropriate transition primary considerations in determining setbacks. Also setbacks may be appropriate to achieve proper scale, building modulation, or view corridor;

....

30. SMC 23.69.025 states that the intent of a MIMP is to "balance the needs of the Major Institutions to develop facilities for the provision of health care or educational services with the need to minimize the impact of Major Institution development on surrounding neighborhoods."

31. The Director advises that Children's has shown a credible need for the requested expansion.

32. Children's states its mission as preventing, treating and eliminating pediatric disease, and providing access to quality pediatric health care regardless of a family's ability to pay. Children's proposed MIMP is intended to allow Children's to fulfill its mission in a manner consistent with its 2006 strategic plan.

33. Children's cites a recent national study of freestanding pediatric hospitals that estimated an annual growth rate of 3.1 percent in inpatient demand for pediatric services through 2010 due to increased severity of pediatric illnesses; increases in prematurity and low birth weight; increased prevalence of chronic conditions; growing prevalence of obesity; more patients surviving childhood diseases and utilizing healthcare services longer; and a need for single bed rooms to control the potential spread of infection.

34. Children's states that a report on its own experience reflects the reported national trends. In 2007 and 2008, it experienced average "midnight occupancy levels" above the targets recommended by the Washington State Department of Health. It has identified a need to improve and expand its facilities to respond to increasingly complex patients who require additional staff, specialists, technology, and equipment and storage space that often varies by patient size, as well as space for additional visitors. *See Exhibit 26, Slide 3.* Children's reports that its current inpatient occupancy rates exceed the national standard of care for pediatric hospitals.

35. Children's has projected the following total unmet bed need, in single-bed rooms, for specialized pediatric care, including psychiatric care, within the State of Washington: 2012 - 336 beds; 2017 - 408 beds; 2019 - 460 beds; 2024 - 600 beds. It states that no other health care provider proposes to fill any of the need. No evidence was produced at hearing to refute this claim.

36. Children's indicates that it will decide how much of the projected statewide need to accept when it applies for a Certificate of Need.

37. To calculate the total square footage required to accommodate total state need, Children's multiplied the maximum projected bed need by 4,000 square feet, which includes 300 square feet required for bed space plus the amount said to be required to support each pediatric bed (i.e., the "per bed share" of family space, operating rooms, diagnostic and therapeutic spaces, offices, central plant space, etc.). *See Exhibit 26, slide 6.* The total bed need of 600 times 4,000 square feet equals 2,400,000 square feet.

38. Children's growth projections show that under Phases 3 and 4 of the proposed MIMP, available space would somewhat exceed total projected need. Exhibit 26, slide 3.

39. Children's most recent Certificate of Need from the state was issued in 2001. The state's planning horizon for a hospital's request for a certificate of need is generally seven years. Thus, Children's anticipates that it would need to submit applications for at least three certificates of need during the lifetime of the proposed MIMP.

40. Public comment uniformly supported the mission of Children's and applauded its work in the region. However many members of the public questioned the need for Children's to nearly triple the size of its existing facilities or to accommodate the state's entire need for specialty pediatric care.

41. Children's did not evaluate any alternatives that included less than 2.4 million square feet of development area. Instead, the alternatives considered different ways to configure the same amount of development space on the existing campus and Hartmann site, and later, on an expanded campus that included both the Laurelon Terrace and Hartmann sites. This made it impossible for anyone to determine what facilities might be lost, and what portion of total need unmet, if development square footage had to be reduced in order to protect the livability and vitality of adjacent neighborhoods.

42. The CAC gave considerable attention to the issue of need. Like the Examiner, they heard from various groups challenging the projected need, from Children's health facilities planning consultant, and from a consultant in health care business planning retained by LCC. LCC's expert prepared a study that projected a bed need much lower than the need projected by Children's consultants. Both consultants stated that they arrived at their conclusions on the basis of the state's certificate of need methodology. *See Exhibits 51-63, 65 and 66, and Exhibits 73-78 and 108. See also, Exhibit 22 at 2-8.*

43. In response to the CAC's continuing concerns about the discrepancies between Children's and LCC's need projections, Children's offered assurance that it had no intention to build beyond its actual needs.

44. Aside from the impacts of a significantly expanded medical center, neighbors were very concerned that facilities not be constructed for general research or other uses not directly supporting Children's pediatric medical care.

45. The CAC determined to accept Children's projections of need with the understanding that the issue would be thoroughly vetted during the state certificate of need process. However, the CAC recommended "in the strongest terms" that the decision on the Master Plan include both conditions on phasing the project in relationship to need and conditions restricting use of the constructed facilities. Exhibit 8 at 17-19. Children's agreed to most of the CAC's recommendation. *See Exhibit 26, Slide 28.*

Boundary Expansions

46. Children's originally proposed to meet projected need primarily within existing MIO boundaries. This required raising heights limits up to 240 feet and expanding the boundary to include up to 105-foot heights on the Hartmann site. The community made it clear that such heights were unacceptable, and the owners of several single-family residences in the neighborhood offered to sell their homes to Children's. As noted above, nine of those sales were completed.

47. Representatives from Laurelon Terrace offered to sell their units to Children's and eventually, the owners of Laurelon Terrace voted to sell the entire condominium community to Children's.

48. Children's revised its proposed Master Plan to include early expansion onto the Laurelon Terrace site (Alternative 7R), thereby enabling it to construct new facilities without disrupting existing hospital operations. The change also allowed Children's to eliminate height increases on the existing campus, reduce the overall height of all new development to less than 160 feet, reduce the overall height of new facilities to an elevation similar to the highest building elevation on the existing campus, place increased height and bulk at a lower elevation where it is removed from most single-family neighborhoods to the east and south and multifamily development to the north, and provide vehicle access via 40th Avenue Northeast (a neighborhood access street), to Sand

Point Way, an arterial. This eliminated the need for entrances on Northeast 45th Street and Northeast 50th Street (also neighborhood access streets).

49. Both the CAC and the Director recommended that the MIO boundary be expanded to incorporate the Laurelon Terrace site.

50. With the expansion to Laurelon Terrace, the Children's campus is considered contiguous to the Hartmann site across the intersection of Sand Point Way and 40th Avenue Northeast. *See Exhibit 17.*

51. The proposed expansion to Hartmann has generated considerable opposition among neighbors. In crossing a major arterial, the expansion breaches what many considered an absolute boundary for the major institution. Other concerns voiced were: 1) that the expansion could also set a precedent for future expansion by Children's or other institutions in the City that are located outside urban growth areas; 2) it would establish a new major institution boundary that would then be contiguous to additional L3-zoned property and development to the north, raising the potential for Children's future expansion in that direction; 3) it would place the multifamily and the neighborhood commercial development in the triangle formed by 40th Avenue Northeast, Sand Point Way and Northeast 45th Street (including the Springbrook buildings) between two sections of the MIO, thereby increasing the likelihood for future Children's expansion to those sites; and it would negatively impact properties within the Bryant neighborhood across the Burke Gilman Trail. Some of those commenting stated that it was not necessary to include the property within the MIO because it could be further developed under a conditional use permit, or could be rezoned for NC2-40 development. Others suggested that the Hartmann site, with its L3 zoning, is the ideal place for the replacement housing required if the Laurelon Terrace units are demolished.

52. Those favoring expansion to Hartmann emphasized that expansion of the MIO to the Hartmann site would allow Children's the entire 2.4 million square feet it was seeking while reducing height, bulk and scale on the main expanded campus, and that it would allow greater neighborhood influence over future development of the property, including building design, through a standing advisory committee. Children's argued that expansion to Hartmann would allow it to construct better connections to the Burke Gilman Trail and develop a "transit center" on both sides of Sand Point Way, as proposed in its Transportation Management Plan (TMP).

53. The CAC struggled with the issue of Hartmann, but recognized that under the Code, they could not negotiate Children's projected need. The CAC ultimately recommended that the Hartmann site be incorporated within the MIO, subject to ten additional conditions designed to reduce the bulk and scale of development on the site and the impact on properties to the north, south and west. Children's has agreed to those conditions. *See Exhibit 26, slide 28.*

54. The Director also recommends the proposed expansion to the Hartmann site for reasons similar to those cited by the CAC.

Intensity

55. Lot coverage on the existing campus is 35%. It will increase to 51% under the proposed MIMP, slightly higher than the coverage amount allowed in single-family zones and slightly higher than that allowed in multifamily zones.

56. The proposed MIMP requests 2.4 million gross square feet. "Gross floor area" is "the number of square feet of total floor area bounded by the inside surface of the exterior wall of the structure as measured at the floorline." SMC 23.84A .014.

57. The Director recommends that the Code definition of gross floor area apply to the MIMP, but also recommends, without citation to authority, that parking and mechanical space be excluded from the 2.4 million gross square feet requested by Children's.

58. "Floor area ratio" is "a ratio expressing the relationship between the amount of gross floor area or chargeable floor area permitted in one or more structures and the area of the lot on which the structure is, or structures are, located, as depicted in Exhibit 23.84A.012A." SMC 23.84A.012.

59. Children's received a Director's interpretation on FAR which stated that since the Code does not prescribe the FAR, or any exclusion from it, for a MIMP, both may be defined by the decision on the MIMP.

60. The proposed MIMP requests an increase in intensity of development, expressed as floor area ratio (FAR), from .9 on the main campus and .2 at Hartmann, to 1.9 across the entire MIO including Hartmann.

61. There has been confusion throughout the MIMP process over what is included within FAR. Different parts of the proposed MIMP list different areas that should be excluded.

62. At hearing, Children's stated that it was seeking a FAR of 1.9 across the entire expanded campus to include both above and below grade square footage, but excluding parking and mechanical space. The Director suggests a FAR that would allow additional development area: 1.9 across the entire expanded campus with exclusions for parking, mechanical space, and all portions of structures located below grade.

63. The CAC accepted the 2.4 million square feet of development requested by Children's, but was concerned that a FAR of 1.9 would allow a greater amount of development because of potential exclusions for mechanical space, parking and below grade structures. Therefore, the CAC recommended that FAR be limited to a maximum of 1.5 for the entire expanded campus. No exclusions are included in the CAC recommendation on FAR, but in light of their explanation, it is logical to assume that they intended mechanical space, parking and below-grade structures to be excluded. Children's has agreed to the CAC recommendation. Exhibit 26, slide 33.

Development Standards and Transitions

64. Details of the proposed development standards for the MIMP are found at pages 75-87 of the proposed MIMP, Exhibit 4, and are summarized at pages 88-91. The development standards would modify or supersede most underlying zoning standards.

Height

65. MIO Heights on the existing campus are 37, 50, 70 (with part conditioned to 64), and 90 (with part conditioned to 74) feet. The MIMP proposes heights of 37, 50, 70, 90, and 160 feet on the main campus, and 65 feet on the Hartmann site.

66. The CAC and the Examiner both heard extensive negative comment on the proposed 160 foot height, which would be massed along Children's boundary on 40th Avenue Northeast and the south half of Children's boundary along Sand Point Way. Concerns expressed included a feeling of towers looming over the streetscapes and the multifamily development across 40th Avenue Northeast, and the widespread opinion that 160-foot towers are simply too high for an area outside an urban village. There was strong public sentiment for reducing the 160 foot MIO height to 105 feet, the maximum MIO height allowed for any other major institution located outside an urban village.

67. The CAC recommended modifications to the heights shown in the proposed MIMP. These included adding a MIO 50 height district along the west side of the main hospital campus along 40th Avenue Northeast, reducing the MIO 160 district to MIO 140 and MIO 125, placing limits on the number of floors above the podiums for the bed towers, limiting and screening rooftop mechanical equipment, and establishing a MIO 65 for the Hartmann site. See Exhibit 93¹. Children's has agreed to some of the CAC recommendation on heights. See Exhibit 26, slide 29.

68. SMC 23.86.006 provides that heights are to be measured from existing or finished grade, whichever is lower. However, Children's proposes to measure MIO Heights from existing grade, based on a survey of existing grades, and suggests that the requirements of SMC 23.86.006 may be varied as part of the master plan process.

Setbacks

69. Under the proposed MIMP, setbacks on the western one-third of the north boundary would increase from 20 feet to 40 feet and on the eastern two-thirds of the north boundary, from 20 feet to 75 feet. Setbacks on the south boundary of the existing campus would remain at 75 feet. On the south boundary of the Laurelon Terrace site, they would be 40 feet. On the east, the setback along 45th Avenue Northeast would increase from 40

¹ The measurements for the MIO 160/140 and MIO 160/125 districts stated in CAC Recommendation 7, at pages 12 and 25 of Exhibit 8, are incorrect. The correct measurements are stated in the motion that adopted Recommendation 7, which is found at page 212 of Exhibit 8. These measurements are reflected in Exhibit 93.

feet to 75 feet; along 44th Avenue Northeast and Northeast 47th Street, they would remain at 75 feet. Setbacks on the west boundary along 40th Avenue Northeast would be 20 feet. On the west boundary along Sand Point Way setbacks would be 10 feet from 40th Avenue Northeast to Penny Drive, and 40 feet from Penny Drive to Northeast 50th Street.

70. On the Hartmann site, proposed setbacks would be 10 feet along Sand Point Way, 20 feet on the south and west, and 40 feet on the north, except at the northwest corner, where setbacks would be adjusted to 80 feet on the north and 60 feet on the west to preserve a grove of Sequoia trees. *See Exhibit 8 at 22.*

Landscaping and Open Space

71. Children's existing campus includes extensively landscaped edges and open space. Children's proposes similar "garden-edge" landscaping within the proposed north, south and east setbacks. On the west, along 40th Avenue Northeast and Sand Point Way, Children's proposes to landscape the street frontage edges.

72. Open space on the main campus will decrease from 45% to 41% of lot area. Open space on the Hartmann site would be 35% of lot area. Some open spaces will continue to be available for community use, and Children's proposes streetscape and pedestrian amenity improvements around and across the campus, including pathways, lighting and plantings.

73. The CAC was concerned that open space be maintained and accessible. It recommended that designated open space be provided in locations at ground level or other spaces accessible to the general public, and that no more than 20% of the designated open space be provided in rooftop locations. Children's has agreed to the recommended condition.

Design

74. Design of new buildings would occur through a design review process, but Children's anticipates that building façades would be composed of materials that aesthetically blend with the existing campus buildings, such as a "precast/ceramic wall cladding system or glazed aluminum curtain wall system". FEIS at 3.9-3.

Transitions

75. Transitions in height, bulk and scale are proposed to be addressed through the pattern of MIO district heights, setbacks, upper-level setbacks, landscaping and design elements.

76. The EIS demonstrates that the proposed MIMP will have significant height, bulk and scale impacts on existing residential areas to the south and west, and testimony from the City's environmental consultant confirmed these impacts. For the no-build scenario, Alternative 1, and the preferred alternative, Alternative 7R, Viewpoint 13 shows a wide

angle perspective from a location south of the single-family residences across from the south boundary of Laurelon Terrace, and south and west of the multifamily residences across 40th Avenue Northeast from Laurelon Terrace. FEIS, Appendix C. Viewpoint 8 shows the perspective from a location west of the multifamily residences on 40th Avenue Northeast.

77. It is possible to assess the approximate height, bulk and scale impacts on the single-family residences on the south side of Northeast 45th Street by reviewing Exhibit 17, and comparing the photo simulation for Alternatives 1 and 7R from Viewpoint 13. It is possible to assess the approximate height, bulk and scale impacts on the lowrise multifamily residences on the west side of 40th Avenue Northeast by reviewing Exhibit 17 and comparing Alternatives 1 and 7R as shown in Viewpoints 8 and 13. *See also*, FEIS at 3.9-6 to 3.9-7.

78. The Director advised that the combination of the approximately 55-foot wide Northeast 45th Street right-of-way, 40-foot landscaped setback, and MIO 50 height district in which a 4- to 5-story garage will be constructed, would create a sufficient transition between the row of one- and two-story single-family residences south of the Laurelon Terrace site and the proposed 125- and 140-foot towers to be constructed on that site.

79. With respect to transitions on the west, the Director recommended that the Master Plan include upper level setbacks along the western edge of campus, requiring that above 50 feet in height, the buildings step back at least 40 feet from the western property line. The Director also recommended that any proposed structure higher than 37 feet and located adjacent to a street edge be reviewed by a standing advisory committee pursuant to design guidelines that will be established.

80. The 65-foot height limit proposed for the Hartmann site exceeds the height limits of the L3 zone that covers the site and extends to the north, the NC zone to the south, and the single-family zone to the west. However, the Director advised that development at Hartmann would provide a transition between the existing 100-foot condominium to the south and the lowrise multifamily development to the north. Hartmann is separated from single-family development to the west by a steep upward slope and the Burke Gilman Trail, which should provide adequate screening.

Transportation, Access and Parking

81. Transportation-related impacts are addressed in section 3.10 and Appendix D of the FEIS. They are also examined in the Director's Report at 70-73 and in the Examiner's decision in MUP-08-035(W).

Transportation

82. Children's has proposed a transportation management program (TMP) that includes the information required by SMC 23.69.030 and SMC 23.54.016. Details of the TMP are

found at pages 93-108 of the proposed MIMP, Exhibit 4, as well as in Exhibit 6, the FEIS, at Appendix D, Attachment T-9.

83. Children's existing TMP has reduced single occupant vehicle (SOV) commute trips to 38% of daytime employees. The proposed TMP includes enhancements to reduce that number to 30%.

84. Proposed enhancements to Children's TMP include an expanded shuttle service linking the Children's campus to regional transit hubs, an extensive bicycle commute program, financial rewards for employees who commute by means other than SOV, various improvements to encourage alternative transportation, and improvements to Children's off-site parking program.

85. The CAC supported the enhanced TMP and recommended an additional provision restricting vehicle entrances on Northeast 45th and 50th Streets to service and emergency access only for the life of the MIMP, and requiring that Children's work with the standing advisory committee to develop additional pedestrian and bicycle-only perimeter access points and designated pedestrian and bicycle routes through the campus to allow efficient connection to the Burke Gilman Trail. Children's did not agree to the additions.

86. The FEIS projects that the MIMP will result in 8,400 new daily vehicle trips without mitigation measures, and 6,800 daily trips with the TMP. That equates to 850 new AM peak hour trips and 690 new PM peak hour trips without the TMP, and 540 new AM peak hour trips and 250 new PM peak hour trips with the TMP.

87. Level of service (LOS) is a measure of average delay at intersections and ranges from LOS A (free-flowing, minimal delay) to LOS F (extreme congestion, long delays). As a general rule, the City considers LOS D (using a weighted average of delays for all approaches) or better acceptable at the signalized intersections.

88. Most intersections in the vicinity of Children's are operating at LOS D or better and are expected to continue to do so in the "No Build" scenario. Notable exceptions are the "Five Corners" intersection (Northeast 45th Street/Union Bay Place Northeast), which presently operates at LOS E and is expected to deteriorate to LOS F, and the Montlake Boulevard Northeast/Eastbound SR-520 ramps, which presently operates at LOS E and is expected to continue at that level.

89. With the addition of projected Children's PM peak hour trips, LOS is expected to deteriorate to LOS E or worse at four intersections. Peak hour delays along the two primary access routes to Children's, (Northwest 45th Street to Interstate 5, and Montlake Boulevard Northeast to SR 520), are expected to increase by several minutes. The amount of the increase would be reduced, but not eliminated by implementing Children's enhanced TMP. Exhibit 6 at 3.10-14 to 3.10-23.

90. Residents of the area are very concerned about congested traffic conditions in the area and question whether the traffic model used to predict intersection LOS at buildout

of the MIMP accounted for "pipeline projects" in the projection for background traffic. In addition to anticipated development at Children's, master use permit applications have been submitted for expansion of the Talaris Research and Conference Center at Northeast 41st Street and expansion of University Village shopping center. Other potential projects, such as redevelopment of the University Village QFC, are anticipated.

91. The FEIS shows that background traffic growth of 710 PM peak hour trips is projected at the Five Corners intersection and 450 trips at the intersection of Montlake Boulevard and Northeast 45th Street. The Director reports that the Talaris and University Village expansions, together, are expected to generate 186 PM peak hour trips at Five Corners, and 193 PM peak trips at Montlake Boulevard/Northeast 45th Street.

92. The Director did not consider the transportation impacts of the state's project to improve SR 520 because funding for the project had not been approved when the FEIS and Director's Report were prepared. It is now known that the state's schedule for construction on the west side of the SR 520 project will coincide with the projected timeline for buildout of the first two phases of Children's proposed MIMP. Exhibit R-10.

93. Approximately 10 percent of Children's employees commute by transit, and 12 percent drive or carpool to one of three off-site parking lots and commute via the shuttle service Children's provides between campus and the lots. Children's proposes under the preferred alternative to relocate these transit stops to Sand Point Way at 40th Avenue Northeast to provide more direct access to Children's, and to serve both the main campus and Hartmann at the same stop.

94. Approximately 11% of Children's employees either walk or bike to work. To encourage increased utilization of non-motorized modes of travel, Children's proposes to construct new sidewalks along portions of Sand Point Way, develop new pedestrian and bicycle facilities at Hartmann, and contribute to funds for improvements to pedestrian and bicycle facilities.

Access

95. Access to Children's under the preferred alternative will continue from Penny Drive via Sand Point Way. In addition, Children's proposes to add both an emergency entrance and a staff parking entrance from 40th Avenue Northeast, a residential access street. Fortieth Avenue Northeast would also serve as a secondary service access. A traffic signal and crosswalk, with emergency vehicle preemption, will be added at the intersection of 40th Avenue Northeast and Sand Point Way.

96. Laurelhurst residents have expressed concern about potential congestion at the 40th Avenue Northeast access points. The street provides the major connection between the Laurelhurst community and northbound Sand Point Way, and emergency vehicles access Laurelhurst via 40th Avenue Northeast to Northeast 45th Street.

97. The transportation analysis determined that the two 40th Avenue Northeast access points would operate at LOS C or better at buildout.

98. The FEIS recommends that a left turn lane be constructed on eastbound Northeast 45th Street at 40th Avenue Northeast to facilitate access to the proposed southwest garage from Northeast 45th Street.

99. The CAC recommended that Children's limit access from 40th Avenue Northeast to one point for either parking or emergency access, but not both, and instead, construct a second new access from Sand Point Way. The CAC also recommended that if the 40th Avenue Northeast entrance is used for parking, it should be designed so that vehicles entering and exiting the garage avoid travel on Northeast 45th Street east of Sand Point Way by traveling only on the portion of 40th Avenue Northeast between the access point and Sand Point Way.

100. Children's consulting transportation engineer evaluated the possibility of adding a second access on Sand Point Way between the traffic signals at 40th Avenue Northeast and Penny Drive, but determined that it would degrade traffic operations on that roadway segment. Consequently, Children's did not agree to the CAC's recommendations.

Parking

101. The FEIS shows that peak parking demand under the MIMP at buildout would be 3,407 vehicles, reduced to 3,190 vehicles with the enhanced TMP. SMC 23.54.016 requires Children's to supply 2,300 to 3,100 parking spaces, either on site or within off-site parking lots. Under the Code, additional spaces may be provided if the major institution is meeting its TMP goal. Children's proposes to supply 3,100 parking spaces on site, including Hartmann, and 500 leased off-site spaces as needed to mitigate future transportation impacts. This would be an increase of 2,182 spaces over existing provided parking.

Mitigation Strategy and Unmitigated Impacts

102. Children's proposed transportation mitigation strategy, including phasing, is discussed at pages 3.10-56 to 3.10-67 of the FEIS and in Appendix D, and is summarized by the Director as follows:

- (1) Children's design and facilities, including campus design, near-site improvements, and off-site parking. Campus improvements include development of a shuttle hub (perhaps combined with transit), additional bicycle parking and shower and locker facilities, a relocated "front door" for the hospital at 40th Ave NE, clear pedestrian flow paths from adjacent neighborhoods and through campus, and a redesign of Penny Drive to provide designed spaces for pedestrians and bicycles, as well as automobiles. Near-site improvements would consist of reconfiguring the Sand Point Way NE/40th Avenue NE intersection in conjunction with SDOT to enhance pedestrian crossings, modifying the Sand

Point Way NE/Penny Drive intersection, and restriping NE 45th St to accommodate a left-turn lane for eastbound-to-northbound turns. Wayfinding and design of near-site pedestrian and bicycle facilities would be improved, and connectivity between the hospital and the Burke-Gilman Trail would be enhanced through improved wayfinding and intersection enhancements. Children's also will continue to pursue new off-site and out-of-area remote parking facilities, which Children's would connect to the hospital campus with shuttle service.

(2) Children's Enhanced Transportation Management Program. To achieve a maximum 30% single-occupant vehicle goal, Children's would expand its existing transit shuttle program, to identify effective shuttle connections from downtown, the University District, and future light rail stations; add new trip reduction services and programs; and modify its parking management policies, including raising the cost of both on-campus single-occupant vehicle parking and commuter bonus awards.

(3) Contributions to area transportation facilities. This encompasses three general strategies:

- (a) a contribution of \$500,000 to construct Intelligent Transportation System improvements from Montlake Boulevard/NE 45th Street and Sand Point Way NE/NE 50th Street;
- (b) a proportional share of Northeast Seattle transportation improvements identified in certain City documents (the University Area Transportation Action Strategy, the Sand Point Way Northeast Pedestrian Study, and the City of Seattle Bicycle Master Plan), amounting to approximately \$1,400,000;
- (c) a \$2,000,000 contribution to cover unfunded pedestrian and bicycle improvements in Northeast Seattle, including priority projects from the Bicycle Master Plan, connections from Children's to the broader bicycle/pedestrian network, and possibly bicycle boulevards.

(4) Proportional share of installation of traffic signals at 40th Avenue NE/NE 55th Street and 40th Avenue NE/NE 65th Street. These intersections will be monitored over the life of the Master Plan to determine the timing of the mitigation implementation.

103. The FEIS shows that traffic generated by Children's will significantly contribute to congestion and the deterioration of traffic conditions in the area. The proposed mitigation package would likely reduce impacts to traffic operations across the Montlake Boulevard and Northeast 45th Street corridors, but only by approximately 40 to 60 percent. The FEIS concludes that significant, unmitigated impacts would remain. Exhibit 6 at 3.10-67 to 3.10-68.

Construction

104. The Director has recommended several conditions to mitigate construction impacts of the proposed MIMP. The CAC has recommended an additional condition to mitigate impacts specific to construction on the Hartmann site, and Children's has agreed to the CAC's recommended condition. *See Exhibit 26. Slide 28.*

Housing

105. Major institutions may not expand their boundaries if the expansion would result in demolition of residential structures "unless comparable replacement is proposed to maintain the housing stock of the city." SMC 23.24.124 B.7.

106. The CAC supports the proposed MIMP's housing replacement plan but recommended specific conditions for inclusion in a Memorandum of Agreement that would be contingent on approval of the MIMP. Exhibit 8 at 28-29. Children's agreed to the CAC's recommendation. Exhibit 26. Slide 28.

107. The Office of Housing considers replacement housing to be "comparable" if, in relation to the demolished housing: 1) it offers 1 for 1 replacement of housing units; 2) it is at the same affordability level; 3) the units are of the same general size, including the number of bedrooms and square footage; 4) it is in the same general location within the City; and 5) it offers long-term affordability.

108. The Office of Housing interprets the housing replacement requirement of SMC 23.34.124 B.7 to mean that the major institution must cause the demolished housing to be replaced. The Office of Housing implements the requirement by asking the institution to provide "gap funding" to enable construction of the requisite number of housing units.

109. There are typically several different sources of funds used to finance an affordable housing project within the City: low income housing tax credits; state housing trust funds; City funds; and additional funds provided from philanthropic organizations or other sources.

110. "Gap funding" for affordable housing is the gap between available funding sources and the total costs to construct the housing. According to the Housing Director, the gap funding normally contributed by the City is approximately \$50,000 per unit.

111. Children's will be demolishing 136 units of low-and moderate-income housing at Laurelon Terrace. *See Exhibit R-4 at 3.8-7 Table 3.8-5, and 3.8-10 to 3.8-11.*

112. Children's, the Director, and the Housing Director have negotiated a Memorandum of Agreement (MOA) for replacement of the Laurelon Terrace housing. Exhibit R-6.

113. According to the Office of Housing, a replacement housing obligation should be calculated by multiplying the City's typical gap funding payment per unit, i.e. \$50,000, by the number of units being demolished.

114. The MOA states that the Office of Housing calculated Children's replacement housing obligation at \$5 million. This was done by first determining that Children's would contribute \$600,000 in gap funding to a low-income housing development at Magnuson Park that will provide 52 units, with sizes and affordability levels similar to the Laurelon Terrace units. The Office of Housing considers this project very important because it has an unusually large number of bedrooms per unit, and the \$600,000 contribution was critical in allowing it to move forward. The 84 additional units required of Children's were multiplied by the City's typical gap funding of \$50,000 (\$4.2 million), and an additional "cushion" of \$200,000 was added, for a total of \$5 million.

115. The MOA recites that the \$4.4 million payment Children's would make to the Office of Housing would be made available to potential for-profit and nonprofit housing developers for development of 84 or more replacement housing units through a competitive funding round. The replacement housing is to remain affordable for a term of at least 50 years.

116. Under the formula suggested by the Office of Housing, Children's housing replacement obligation would be \$6,800,000 (136 units x \$50,000), rather than \$5 million. Gap funding for the 52 units of replacement housing (52 x \$50,000) would equal \$2,600,000, not \$600,000.

117. The MOA recites the fact that Children's has agreed to purchase the Laurelon Terrace units at fair market value and pay all costs of sale, and that if Children's proposed MIMP and boundary expansion onto the Laurelon Terrace site is approved, Children's will raise the compensation for each unit to approximately 2.55 times the fair market value (an additional payment of \$93 million), and pay required relocation assistance for any eligible tenant currently renting a Laurelon unit from Children's.

118. The MOA recites that the Office of Housing calculated Children's housing replacement obligation based upon: a) the requirements for comparability; b) precedents established by the City concerning replacement housing obligations imposed on other major institutions; and c) "the provisions for the extraordinary direct compensation paid by Children's to the owners and tenants [at Laurelon Terrace]". Exhibit R-6 at 2.

119. The Housing Director considers the payment to owners at Laurelon Terrace a benefit to the City, as well as to Children's, because it would enable the moderate-income owners to purchase equivalent replacement housing, and these purchases would also remove some of the excess housing stock from the market.

120. One of the precedents cited in the MOA is the 1994 Virginia Mason Medical Center MIMP that required demolition of approximately 80 market rate housing units. The MOA, at page 3, and the RFEIS at 3.8-8, state that "[t]here was no City requirement in

the Master Plan decision that Virginia Mason replace any units on a one-to-one basis, and there was no specification of the amount of funds required to be paid by Virginia Mason for replacement housing. No funds were paid by Virginia Mason to the City."

121. The evidence in the record shows that the housing replacement provisions in the Major Institution Code were not in effect when the Virginia Mason MIMP was approved, and that the nominal amount of housing mitigation required of Virginia Mason was imposed pursuant to SEPA.

Height District Rezone

122. The Director's Report addresses the required rezone in detail relative to the requirements of SMC 23.34.124 on designation of MIO's and SMC 23.34.008, the general rezone criteria. Exhibit 9 at 45-62.

123. Rezones are required for the areas identified in MIMP Figure 1 (Exhibit 4 at 12) as Laurelon Terrace and Hartmann, and for increased height districts on portions of the existing campus.

124. Laurelon Terrace and Hartmann are presently zoned L3 for low density residential development. Prior to its L3 zoning, Hartmann was zoned RM, which allowed medical clinic use. It has been used for medical office space since at least the 1950s when Children's moved to its present location and purchased Hartmann. Laurelon Terrace was developed as a one-and two-story, garden-style condominium in the 1940s.

125. The most recent Children's master plan and rezones were approved in 1994, and added just 22,000 square feet, for a total development area of 900,000 square feet. The FAR was increased from .5 to .9.

126. Children's existing height districts are shown in Exhibit 4, Figure 45 at 63. MIO heights are MIO 37 on the north, increasing to MIO 70 (conditioned to 64) and MIO 90 (conditioned to 74) toward the center of the campus, and decreasing to MIO 50 and MIO 37 on the south. Proposed height districts, as modified by accepted CAC recommendations, are shown in Exhibit 93. The proposed MIMP increases heights to MIO 65 on the northeast and MIO 90, MIO 160/140 and MIO 160/125 on approximately the west one-third of the center of the expanded campus, and adds MIO 50 and MIO 37 on the south part of the expanded campus. It also increases the height at Hartmann to MIO 65.

127. The Director did not provide information or analysis on the potential precedential effect of the proposed rezones.

128. The Director advises that the proposed rezones are consistent with the zoning principle that requires minimization of the impact of more intensive zones on less intensive zones through use of transitions or buffers, if possible, (SMC 23.34.008 E.1); that with recommended conditioning, the height limits of the district boundaries are

compatible with heights in adjacent areas (SMC 23.34.124 C.2); and that transitional height limits have been provided where the maximum permitted height within the MIO is significantly higher than permitted heights in adjoining areas (SMC 23.34.124 C.3).

129. The Director also advises that the rezone is consistent with the zoning principle which provides that, in general, height limits greater than 40 feet should be limited to urban villages, and that height limits greater than 40 feet may be considered outside urban villages if the limits would be consistent with an adopted neighborhood plan, a major institution's adopted master plan, or the existing built character of the area (SMC 23.34.008 E.4).

Conclusions

1. The Hearing Examiner has jurisdiction over this matter pursuant to Chapters 23.69 and 23.76 SMC.

Need and Public Benefit

2. There is no question raised concerning the public benefits that Children's provides and will provide in the future. The record includes a substantial amount of information about Children's exceptional work.

3. Although SEPA allows an applicant broad latitude in defining its own development objective, SMC 25.05.440 D, the Major Institution Code requires more when it comes to "need". To assure that the Master Plan balances the projected needs of the Major Institution with the need to minimize impacts on surrounding neighborhoods, as required by SMC 23.69.025, it is necessary to know with some degree of accuracy what the Major Institution's needs actually are.

4. The testimony of both Children's and LCC's healthcare planning experts was credible, but because of illness, LCC's expert was not subject to cross examination. Further, the evidence in the record shows that in calculating bed need, LCC's expert incorrectly excluded patients 15 and over from the first step of the state methodology used for calculating need, and used a "midnight occupancy level" for Children's that assumed any available bed could be used for any patient. In fact, Children's 230 acute-care beds are located in several discrete specialty units and are generally not interchangeable. These errors resulted in a report from LCC's expert that understated total bed need. The report is also inconsistent with Children's current experience.

5. The evidence in the record shows that the Certificate of Need process requires, among other things, that an applicant demonstrate that it has control of a site proposed for expansion; document that the proposed site may be used for the intended project and is properly zoned; provide a project timeline; and begin the project within two years of receiving a Certificate of Need. Consequently, it appears that an approved MIMP is necessary before Children's can successfully apply for a Certificate of Need.

6. Children's has shown a projected statewide need for specialized pediatric care over the next 20 years sufficient to support the development area being requested in the proposed MIMP. The evidence in this record does not show that other providers will likely fill the need.

7. The CAC's recommended condition, that approval of Master Use Permits for the various phases of development be contingent on a demonstration of need by Children's, and restricting use of space within the MIO primarily to those providing pediatric medical care or directly related services, is appropriate and should be included as a condition if the MIMP is approved.

Boundary Expansion

8. The Code strongly discourages expansion of MIO boundaries, and calls for MIOs to include contiguous areas that are as compact as possible within the constraints of existing development and property ownership. However, the Code also stresses the need to protect the livability and vitality of adjacent neighborhoods. As suggested in the Director's Report, the likely intent of Code provisions discouraging boundary expansion is to protect established residential neighborhoods from unrestrained major institution expansion. In this case, nearby residential neighborhoods are better protected by expansion of the MIO boundary to include the Laurelon Terrace site than they would be by requiring Children's to accommodate the entire projected need within existing boundaries.

9. Similar reasoning applies to Hartmann. If it is accepted that Children's must fill the total statewide need for specialty pediatric care, then allowing 150,000 square feet of development and 225 parking spaces on the Hartmann site would further reduce the heights required on the main expanded campus. It would also reduce the proximity of new development to most surrounding single-family, and some of the surrounding multifamily development.

10. Children's enhanced TMP, including connections to the Burke Gilman Trail on the Hartmann site, and transit and shuttle improvements on both sides of Sand Point Way, was developed to provide partial mitigation for the significant adverse transportation impacts associated with each of the alternatives studied, including the non-Hartmann Alternative 8. There appears to be general acceptance of the idea that Children's could not be required to provide any of the same transportation mitigation measures for a non-Hartmann alternative (either Alternative 8 or a reduced development alternative that eliminated Hartmann). However, to the Examiner's knowledge, this issue has not been explored, and the question cannot be answered on this record.

11. Although the community strongly desires that Sand Point Way remain a firm boundary for Children's, that result appears unachievable. Children's cannot expand to the single-family neighborhoods to the east or south, and expansion to the north is not desirable. Although Children's has an ownership interest in the Springbrook property, it cannot be required to purchase the remaining property within the triangle bounded by

40th Avenue Northeast, Sand Point Way and Northeast 45th Street for its current expansion.

12. The Hartmann site is zoned L3, but it has been used as a medical clinic and office for many years, and it is likely that Children's will continue this use. Concern with Children's "leapfrogging" Sand Point Way to establish an MIO boundary on the west side is understandable, but the benefits to the neighborhood of placing some of the proposed development at Hartmann outweigh the risks. While it is impossible to know what conditions will be like 20 years in the future, it seems highly unlikely that Children's would choose to grow into the multifamily area north of Hartmann, and under the existing Code, it cannot expand into the single-family neighborhood west of the Burke Gilman Trail. Moreover, the Council maintains significant control of future MIO expansions.

13. The CAC's recommended conditions to reduce the bulk and scale of development on the Hartmann site and other impacts on neighboring properties are appropriate and should be included as a condition if the MIMP is approved.

Intensity

14. The increase in lot coverage from the 35% coverage allowed in the underlying single-family zone to 51%, an amount similar to the 45%-50% coverage allowed in the underlying L3 zone, will increase the intensity of development on the Children's campus but not to an unreasonable extent.

15. Children's requested 2.4 million gross square feet of development area. No authority has been cited for excluding mechanical space from gross floor area, and it is expressly included in Children's square footage calculations. Exhibit 4 at 68; Exhibit 6 at 2-26 to 2-27. However, calculations for the gross square footage of the various MIMP phases do not include parking. Exhibit 4 at 66. The public conversation concerning the proposed MIMP has proceeded on this basis, and expectations fostered during the MIMP process should be respected. Gross floor area for the MIMP should be 2.4 million gross square feet excluding only parking.

16. Exclusions from FAR under the Code depend upon the zone in which a proposal is located. Since FAR does not apply to single-family or multifamily zones, there are no prescribed FAR or exclusions governing this application, as stated in the Director's interpretation.

17. A FAR of 1.9 is designed to give Children's the 2.4 million gross square feet of development space it requested and should be approved. Children's requested FAR included both above- and below-grade, and the FAR should reflect that request. As noted, there is no basis in this case for excluding mechanical space. And to provide an incentive for Children's to reduce height, bulk and scale impacts by constructing its parking structures underground, only below-grade parking should be excluded from the

FAR. To summarize, FAR should exclude only rooftop mechanical equipment, any parts of structures below grade, and below-grade parking.

Development Standards and Transitions

18. The Examiner recommends that MIO heights be measured from existing or finished grade, whichever is lower, in accordance with SMC 23.86.006. Under SMC 23.69.020, development standards for major institutions may be modified through adoption of a MIMP. Development standards are found in Division 2 of Subtitle III of the Land Use Code, Title 23 SMC. The standards for measurements are found within Division 2 of Subtitle IV, "Administration," of the Land Use Code. Thus, the standards for measuring height is not a "development standard" under the Code, and it may not be modified in the Master Plan.

19. All setbacks proposed in the MIMP meet or exceed the setbacks required in the underlying zones. However, the 20-foot west setback along 40th Avenue Northeast, even in combination with the adjacent street, a 60-foot deep MIO 50, and upper level setbacks would not provide an adequate transition between the lowrise multifamily and commercial development to the west and the proposed 125- and 140-foot towers across the street. *See Exhibit 22, Appendix H.* Realistically, there is no reasonable setback and/or landscaping that could mitigate the impact in this location. Although the Director determined otherwise in the FEIS, this is a significant adverse height, bulk and scale impact that cannot be mitigated under the proposed scale of development.

20. Similar reasoning applies to the 40-foot landscaped setback and MIO 50 on the south boundary of the Laurelon Terrace site relative to the single-family development across Northeast 45th Street, a street with an average width of approximately 54 feet. A more reasonable setback would be 75 feet, similar to the rest of the south setback, together with a requirement for extensive landscaping. This would likely require that the southwest garage be constructed below grade. There is no evidence in the record that this was considered.

21. The setback on the east boundaries, together with moving the greatest mass of development to the west side of the campus and stepping it down the hillside, will provide a sufficient buffer for the single-family neighborhood to the east.

22. The proposed development at the Hartmann site would provide an appropriate transition in height between the lowrise zoning and development to the north and the nonconforming condominium to the south, and would be adequately screened from single-family development to the west. The setbacks for Hartmann should be those recommended by the CAC, as stated in Conclusion 13.

23. The CAC's recommended modification to the proposed heights shown in the MIMP is appropriate and should be included as a condition if the MIMP is approved.

Transportation, Access and Parking

24. The issue of whether the forecast for PM peak hour background trips included in the traffic model was sufficient to cover traffic generated by known "pipeline projects" is a SEPA issue and was addressed briefly in the decision in MUP-08-035(W). To summarize, the record shows that the background traffic forecast was sufficient to cover known "pipeline projects". Further, Master Use Permit applications and additional environmental review would be required for each project within Children's proposed MIMP. Additional mitigation could be required if it were shown that a shortfall in forecast traffic growth will likely lead to unanticipated transportation impacts.

25. Although Children's proposes an aggressive TMP, and a comprehensive mitigation package, the record shows that between 40 percent and 60 percent of Children's demonstrated adverse impacts on traffic operations cannot be mitigated. Approval of the scale of development requested in the MIMP requires accepting these significant unmitigated adverse traffic impacts.

26. Although there is significant neighborhood concern about congestion on 40th Avenue Northeast, the evidence in the record shows that the two access points proposed for this street will operate at LOS C or better, and that moving one of the access points to Sand Point Way would degrade traffic operations on that arterial. The CAC's suggestion to limit access from 40th Avenue Northeast to one entrance should not be included as a condition if the MIMP is approved.

27. The transportation impacts of the overlap between the state's schedule for construction on the west side of the SR 520 project and buildout of the first two phases of Children's proposed MIMP must be considered and appropriate mitigation imposed. However, the analysis would be more accurate, and the mitigation more effective, if current information available during the Master Use Permit process for each development project were used.

Construction

28. The CAC's recommended condition for mitigation of impacts specific to construction of the Hartmann site is appropriate and should be included as a condition if the MIMP is approved.

Housing

29. LCC and other members of the public interpret the Code language on housing replacement as requiring that Children's fully fund replacement of 136 low-to moderate-income housing units rather than providing only gap financing for the units. They cite the ordinance adopting the 2000 Harborview Master Plan, which provides that Harborview must develop the "replacement housing units without City funds, with the exception of possible short-term City financing which must be reimbursed by Harborview/King County," and that the housing is to remain affordable for a period of 10

years. Exhibit R-20 at 13. However, this condition was removed by the Director, as a minor amendment to the Harborview Master Plan, and Harborview was instead required to contribute \$1.5 million to a low-income senior housing development that was to remain affordable for a period of 50 years. Exhibit R-21.

30. SMC 23.24.127 B.7 does not expressly state that a major institution must fully fund replacement housing. It states that a major institution may not expand its boundaries if the expansion would result in demolition of residential structures "unless comparable replacement housing is proposed to maintain the housing stock of the city". If the meaning of a statute or Code section is plain on its face, that meaning must be given effect. However, if the language is susceptible to more than one reasonable interpretation, the Code section is ambiguous and must be interpreted using legislative history and principles of statutory construction. See *Udall v. T. D. Escrow Services Inc.*, 159 Wn.2d 903, 909, 154 P.3d 882 (2007)(citations omitted). The Code language at issue is clearly subject to more than one reasonable interpretation, and the limited legislative history available in this case provides no guidance on its meaning. However, a rule of statutory construction applicable here provides that a reviewing body accords deference to an agency's interpretation of a statute or code where the agency has specialized expertise in dealing with an issue. *City of Redmond v. Central Puget Sound Growth Management Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998). The Office of Housing has particular expertise in affordable housing finance, and the Examiner will defer to the Office's interpretation that SMC 23.24.127 B.7 requires a major institution to provide gap financing to enable the required replacement housing to be provided.

31. The acquisition of Laurelon Terrace provided a substantial benefit to Children's, allowing it to prepare a MIMP that was somewhat more palatable to the neighborhood than the one initially proposed. However, as noted by the Office of Housing, the payment of 2.5 times the market value of the units also would enable the moderate-income owner-occupants at Laurelon Terrace to secure equivalent replacement housing, something most could not do without the additional payment. This would serve the underlying intent of SMC 23.24.124 B.7 to maintain sufficient housing within reach of those with moderate and low incomes.

32. The gap funding listed in the MOA is \$1.8 million less than Children's housing replacement requirement as calculated under the formula described by the Office of Housing (136 x \$50,000). From the evidence in the record, it appears that Children's is being given credit for \$1.8 million of the additional \$93 million payment it is to make to the Laurelon Terrace owners. If this is true, that fact should be clearly reflected in the MOA. If not, the manner in which the replacement housing obligation was calculated should be stated more clearly in that document.

33. The housing replacement requirement for the 1994 Virginia Mason Medical Center Master Plan was not calculated pursuant to SMC 23.34.124 B.7, and it is therefore does not provide a precedent for the MOA with Children's. The MOA language used to

describe housing replacement for the Virginia Mason Master Plan is misleading. It should either be removed from the MOA or redrafted to improve its accuracy.

34. The MOA meets the conditions included in the CAC's recommendation on replacement housing.

35. With the changes required in Conclusions 32 and 33, the commitments reflected in the MOA meet the Code's requirements for comparable replacement housing for the units to be demolished at Laurelon Terrace.

Height District Rezone

36. As discussed above in the section on development standards and transitions, the requested rezones are inconsistent with two of the Code's zoning principles and two of the criteria that must be used to select appropriate MIO height districts.

37. The single-family and lowrise multifamily residences along Northeast 45th Street and 40th Avenue Northeast, respectively, are adjacent to well established lowrise zoning and development. The impact of rezoning that property to MIO 160/140 and MIO 160/125, and the anticipated corresponding development, cannot be minimized by the use of transitions in height, upper level setbacks and 20-40 foot setbacks. *See SMC 23.34.008 E.1.* Similarly, height limits at the MIO 160/MIO 140 and MIO 160/MIO 125 district boundaries would not be compatible with the adjacent single-family and lowrise multifamily and commercial heights. *See SMC 23.34.124C.2.* Although transitional height limits of MIO 37 and MIO 50 would be provided on the south, and MIO 50 on the west, they are of insufficient depth to reduce the impact of the adjacent 140-foot and 125-foot towers.

38. Although greater than 40 feet, the proposed MIO 160/140 and MIO 160/125 districts may be considered outside an urban village, but only if the proposed heights would be consistent with an adopted neighborhood plan, a major institution's adopted master plan, or the existing built character of the area. *SMC 23.34.008 E.4.* Laurelhurst is outside an urban village and has no adopted neighborhood plan. The proposed heights are not consistent with Children's adopted MIMP, which caps heights at 74 feet. And the proposed heights are not consistent with the area's existing built character, which consists of one-and two-story single-family residences, lowrise multifamily development, and a small amount of lowrise commercial development. The only non-institutional development in the area that is not lowrise is the 100-foot nonconforming condominium west of Sand Point Way and south of Hartmann. However, that building is an anomaly, and is not immediately adjacent to any single-family or lowrise multifamily development. From the west and south, impact of towers 95 to 110 feet taller than the adjacent single-family or lowrise development will be stunning.

Balancing

39. Balancing the need of an institution to change, and the benefits associated with that change, with the need to protect the livability and vitality of adjacent neighborhoods requires an appreciation of the context for the balancing.

40. The City's urban village strategy, adopted as part of the Comprehensive Plan (Plan) is a "comprehensive approach to planning for a sustainable future" that is "intended to maximize the benefit of public investment in infrastructure and services". It "tries to match growth to the existing and intended character of the city's neighborhoods." Plan at 1.2-1.3. Most residential and job growth is to be directed to urban centers and villages. Areas outside urban villages are to accommodate modest amounts of growth in less dense development patterns. Plan at 1.3, 1.22.

41. Once a small hospital, Children's has grown into a regional medical center that has gradually expanded on its main campus and to other facilities within the area, in addition to maintaining a presence in other parts of the City and in neighboring cities. It now seeks to incorporate the 7-acre Laurelon Terrace site and 1.7-acre Hartmann site into its MIO.

42. Children's was part of the Laurelhurst neighborhood when the Council designated urban centers and urban villages during the comprehensive plan process in the 1990s. Yet the Laurelhurst area was not designated as an urban center or village.

43. It is apparent from the RFEIS' Land Use section that Children's expansion under the proposed MIMP is inconsistent with the City's urban village strategy. Although major institutions are permitted outside urban villages/centers, Children's seeks heights that exceed those of any other major institution located outside an urban village or center. Exhibit 22, Attachments H and I. The significant, unmitigated traffic, and height, bulk and scale impacts associated with Children's proposed expansion result largely from the fact that the MIMP proposes development outside an urban village at an intensity that is designed for development within an urban village. Children's is asking that the proverbial "square peg" be forced into a "round hole," but it does not fit.

44. The City's general policy toward significant, unmitigatable traffic impacts stresses enhancement of non-SOV travel modes that could increase the person-carrying capacity of the transportation system without necessarily increasing vehicular capacity. However, the amount of time it takes to get to work and back, to shop, and to complete the other tasks of daily life, either by bus or by car, is a component of the vitality and livability of an area. When a major institution that produces thousands of daily trips during peak hours is located in an area with two severely congested transportation corridors that are utilized by 50 percent of its employees, it may be necessary to explore a less ambitious expansion. The same is true with respect to the significant height, bulk and scale impacts of the proposed MIMP at the west and south boundaries of the Laurelon Terrace site, as discussed above.

45. The MIMP approved for Children's may well be viewed as precedential by other institutions located outside urban growth areas. It may also send a signal to the owners of property at the perimeters of those major institutions about the stability of neighborhood zoning. It will clearly shape the character of the Laurelhurst neighborhood. And it will decide the future of some of the properties adjacent to the perimeter of the expanded campus. See Exhibit 22, Attachment G.

46. In this situation, it is essential to scrutinize need relative to alternative development scenarios. Children's has avoided this scrutiny by not providing any alternatives that would afford less than 2.4 million square feet of development area. The Code provides that "appropriate" institutional growth within boundaries is to be permitted while minimizing associated adverse impacts. SMC 23.69.002 A. And the major institution's ability to change, and benefits associated with that change, are to be balanced with the need to protect the livability and vitality of adjacent neighborhoods. SMC 23.69.002 B. The Code does not dictate what that balance should be. Therefore, even if Children's could demonstrate that it should absorb the entire statewide need for specialty pediatric care, it is not necessarily entitled to this intensity of development, in this place, at this time.

Recommendation

The Hearing Examiner recommends that the City Council deny the proposed Master Plan for Children's Hospital. However, if the Council decides to approve the Master Plan, the Examiner recommends that it be approved as modified by, and subject to the conditions enumerated below.

If the City Council approves the Master Plan as modified, the Council should also approve rezones for the Major Institution Overlay height districts as illustrated in Exhibit 93, which is attached to this Recommendation.

RECOMMENDED CONDITIONS FOR MASTER PLAN APPROVAL

RECOMMENDED MASTER PLAN CONDITIONS

1. Children's shall limit total development on the expanded campus to a total of 2.4 million gross square feet, excluding parking.
2. The Floor Area Ratio (FAR) for the expanded campus shall not exceed 1.9, excluding below-grade parking and rooftop mechanical equipment.
3. In areas designated as MIO 160, the maximum height of proposed structures shall not exceed 140 feet for the area located north of an east-west line lying 400 feet north of the extension of the current south property line of the Children's campus, and 125 feet for the area located south of the same line, all as shown on Exhibit 93.

4. MIO heights shall be measured from existing or finished grade, whichever is lower, in accordance with SMC 23.86.006.

5. Children's shall amend Section IV.D.1 of the Master Plan to add upper level setbacks 80 feet deep, applied to portions of buildings higher than 50 feet, along the western edge of the expanded campus on 40th Avenue Northeast from Sand Point Way Northeast south to Northeast 45th Street, and 30 feet deep on Sand Point Way from 40th Avenue Northeast to Penny Drive.

6. Children's shall amend Section IV.D.1 and Master Plan Figure 50, "Proposed Structure Setbacks," to increase the south setback to 75 feet along the entire Northeast 45th Street boundary.

7. Children's shall revise Section IV.D.1 and Master Plan Figure 50, "Proposed Structure Setbacks," to show setbacks on the Hartmann site as indicated in Figure 1 in Exhibit 8, the CAC's Final Report and Recommendation.

8. Children's shall amend Section IV.C.1 of the Master Plan to expressly prohibit above-ground development within the setback areas, as shown on revised Figure 50, except as otherwise allowed in the underlying zone.

9. Specifically with respect to the Hartmann site, the following conditions apply:

- All Sequoia trees in the existing grove on the property shall be retained to the extent they are healthy
- The connection between Sand Point Way and the Burke Gilman Trail shall be designed in partnership with the City and the Hawthorne Hills and Ravenna/Bryant neighborhoods
- Pedestrian, bicycle and non-motorized vehicle access to the Burke Gilman Trail may be provided within the 40-foot north setback.
- A landscape/green screen shall be provided at the north, south and west edges of the property, and Children's shall seek neighborhood input and review during its design
- Lot coverage on the site shall be limited to 55 percent
- The height of the west side of the building shall be no higher than the average grade of the Burke Gilman Trail within 60 feet of the west property line
- The mechanical penthouse on the Hartmann building shall be restricted to no more than 25 percent of the roof area and shall be shifted east, toward Sand Point Way, as far as reasonable

10. A minimum of 41% of the combined total area of the expanded campus shall be maintained as open space. In addition:

- No more than 20 percent of the designated 41% open space, or 8 percent total, shall be provided in roof top open spaces

- Open Space areas shall include existing and proposed ground level setback areas identified in the Master Plan, to the extent that they meet the criteria in the proposed Design Guidelines
- Open Space should be provided in locations at ground level or, where feasible, in other spaces that are accessible to the general public
- The location of open space, landscaping and screening as shown on Figure 42 of the Master Plan may be modified as long as the 41% figure is maintained
- To ensure that the 41% open space standard is implemented with the Master Plan, each planned or potential project should identify an area that qualifies as Open Space as defined in this Master Plan
- Open Space that is specifically designed for uses other than landscaped buffers or building setback areas, such as plazas, patios or other similar functions, should include improvements to ensure that the space contains Usable Open Space as defined under SMC 23.84A.028
- Open space shall be designed to be barrier-free to the fullest extent possible.

11. For the life of the Master Plan, Children's should maintain open space connections as shown on Figure 56 of the Final Master Plan, or similar connections constituting approximately the number and location of access points as shown in the Master Plan. During the review of all future buildings, Children's should evaluate that building's effect upon maintaining these connections. If Children's proposes to change the open space connections from surrounding streets from that shown on Figure 56, it shall first provide notice to DPD and DON, and formally review the proposed changes with the SAC.

12. Children's shall amend Section V.D, "Parking" on page 104 of the Final Master Plan to add the following at the end of that subsection: "As discussed in the TMP, the forecasted parking supply including the potential leasing of off-site spaces, exceeds the maximum allowed under the Land Use Code. Therefore, if Children's continues to meet its Transportation Master Plan goals, the Master Plan authorizes parking in excess of the Code maximum to minimize adverse parking impacts in the adjacent neighborhood."

13. Children's shall amend Table 3 "Development Standard Comparisons" in the Master Plan to be consistent with all modifications to development standards within this recommendation.

14. Prior to the submittal of the first Master Use Permit application for Phase 1, Children's must draft a more comprehensive set of Design Guidelines for planned and potential structures, to be reviewed by the Seattle Design Commission and approved by DPD. The Design Guidelines shall be an appendix to the Master Plan and shall address issues of architectural concept, pedestrian scale, blank wall treatment, tower sculpting, nighttime lighting, and open space and landscaping, among others.

15. Children's shall create and maintain a Standing Advisory Committee (SAC) to review and comment on all proposed and potential projects prior to submission of their

respective Master Use Permit applications. The SAC shall use the Design Guidelines for their evaluation.

16. Any proposal for a structure more than 37 feet in height shall be subject to formal review and comment by the SAC.

17. Prior to issuance of any MUP for any project under Phases 2, 3 and 4 of the Master Plan, Children's shall provide documentation to the Director and the SAC clearly demonstrating that the additional construction requested is needed for patient care and directly related supporting uses by Children's, including administrative support.

18. Prior to issuance of any MUP for any project under Phases 2, 3 and 4 of the Master Plan, Children's shall provide documentation to the Director and the SAC clearly demonstrating that Children's is meeting the 30% SOV goal in its TMP.

19. No portion of any building on Children's extended campus shall be rented or leased to third parties except those who are providing pediatric medical care, or directly related supporting uses, within the entire rented or leased space. Exceptions may be allowed by the Director for commercial uses consistent with the underlying zoning that are located at the pedestrian street level along Sand Point Way, or within campus buildings where commercial/retail services that serve the broader public are warranted.

20. Prior to the issuance of any permit for demolition of the Laurelon Terrace condominiums, Children's shall formalize an agreement with the City for replacement housing due to the demolition of the Laurelon Terrace residences. The agreement shall be substantially in the form of the *Memorandum of Agreement Between the City of Seattle and Seattle Children's Hospital Pertaining to Replacement Housing* (Agreement), Exhibit R-6, which is attached to this recommendation. However, the Agreement shall be revised to more clearly reflect the manner in which Children's housing replacement requirement was calculated, and to either clarify subsection 2(ii) describing the housing replacement associated with the Virginia Mason Master Plan, or remove that subsection.

21. Children's shall develop a Construction Management Plan (CMP) for review and comment by the SAC prior to the approval of any planned or potential project discussed in the Master Plan. The CMP must be updated at the time of site-specific SEPA review for each planned or potential project identified in the MIMP. The CMP shall be designed to mitigate impacts of all planned and potential projects and shall include mitigating measures to address the following:

- Construction impacts due to noise
- Mitigation of traffic, transportation and parking impacts on arterials and surrounding neighborhoods
- Mitigation of impacts on the pedestrian network
- Mitigation of impacts if more than one of the projects outlined in the Master Plan are under concurrent construction

22. The CMP shall also include the following with respect to the Laurelhurst Condominium site and other nearby buildings surrounding both the Hartmann site and the campus west of Sand Point Way:

- Children's shall implement a system to keep dust from entering through building windows and vents
- Children's shall provide legal assurance that the water table surrounding the Hartmann site will not be changed to the detriment of the Laurelhurst Condominium
- Children's shall provide legal assurance that construction workers will be precluded from using the Laurelhurst Condominium parking area adjacent to the Hartmann site
- The buildings shall be washed when construction is completed
- The traffic signal at 40th Avenue Northeast shall be installed and functioning before Phase I construction begins

RECOMMENDED SEPA CONDITIONS

Geology

23. To minimize the possibility of tracking soil from the site, Children's shall ensure that its contractors wash the wheels and undercarriage of trucks and other vehicles leaving the site and control the sediment-laden wash water using erosion control methods prescribed as City of Seattle and King County best management practices for construction projects. Such practices include the use of sediment traps, check dams, stabilized entrances to the construction site, erosion control fabric fences and barriers, and other strategies to control and contain sediment.

24. Children's shall ensure that its contractors cover the soils loaded into the trucks with tarps or other materials to prevent spillage onto the streets and transport by wind.

25. Children's shall ensure that its contractors use tarps to cover temporary on-site storage piles.

Air Quality

26. Prior to demolition of the existing housing units at Laurelon Terrace, Children's shall perform an asbestos and lead survey and develop an abatement plan to prevent the releases into the atmosphere and to protect worker safety.

27. During construction, Children's shall ensure that its contractors spray exposed soils and debris with water or other dust suppressants to reduce dust. Children's shall monitor truck loads and routes to minimize impacts.

28. Children's shall stabilize all off-road traffic, parking areas, and haul routes, and it shall direct construction traffic over established haul routes.

29. Children's shall schedule delivery of materials transported by truck to and from the project area to minimize congestion during peak travel times on adjacent City streets. This will minimize secondary air quality impacts otherwise caused by traffic having to travel at reduced speeds.

30. Children's shall ensure that its contractors cover any exposed slopes/dirt with sheets of plastic.

31. Around relevant construction areas, Children's shall install perimeter railings with mesh partitioning to prevent movement of debris during helicopter landings.

Noise

32. Construction will occur primarily during non-holiday weekdays between 7:00 am and 6:00 pm, or as modified by a Construction Noise Management Plan, approved by DPD as part of a project-specific environmental review.

33. Children's will inform nearby residents of upcoming construction activities that could be potentially loud. Children's shall schedule particularly noisy construction activities to avoid neighborhood conflicts whenever possible.

34. Impact pile driving shall be avoided. Drilled piles or the use of a sonic vibratory pile driver are quieter alternatives.

35. Buildings on the extended campus are to be designed in such a way that noise received in the surrounding community is no greater than existing noise based on a pre-test of ambient noise levels and subsequent annual noise monitoring to be conducted by Children's.

Transportation

36. Onsite improvements shall include: shuttle hub; an enhanced campus pathway to connect to transit along Sand Point Way NE and/or 40th Ave NE; and bicycle parking.

37. Near-site improvements will include: working with SDOT and WSDOT to improve intersections such as Penny Drive/Sand Point Way NE and 40th Ave NE/Sand Point Way NE; improve connectivity between the Burke-Gilman Trail and Children's; enhance the Sand Point Way NE street frontage.

38. As necessary to reduce future transportation impacts, Children's shall provide off-site parking that reduces the level of required parking on site and reduces traffic on NE 45th St, Sand Point Way NE and Montlake Blvd/SR 520 interchange area.

39. Children's shall enhance its TMP to achieve a 30% single occupancy vehicle (SOV) mode split goal or lower.


40. Children's shall contribute its fair share to the future installation of traffic signals at 40th Ave NE/NE 55th St and 40th Ave NE/NE 65th St.

41. Children's shall contribute \$500,000 to build Intelligent Transportation System improvements through the corridor from Montlake Blvd/NE 45th St to Sand Point Way NE/NE 50th St.

42. Children's shall contribute a pro rata share of the Northeast Seattle Transportation improvement projects identified from the University Area Transportation Action Strategy, the Sand Point Way NE Pedestrian Study, and the City of Seattle Bicycle Master Plan. This amount is estimated at approximately \$1,400,000 or approximately \$3,955 per bed (adjusted for inflation as beds come online).

43. In coordination with SDOT, Children's shall contribute \$2,000,000 for pedestrian and bicycle improvements in Northeast Seattle over the timeframe of the Master Plan development.

Entered this 11 day of August, 2009.


Sue A. Tanner
Hearing Examiner

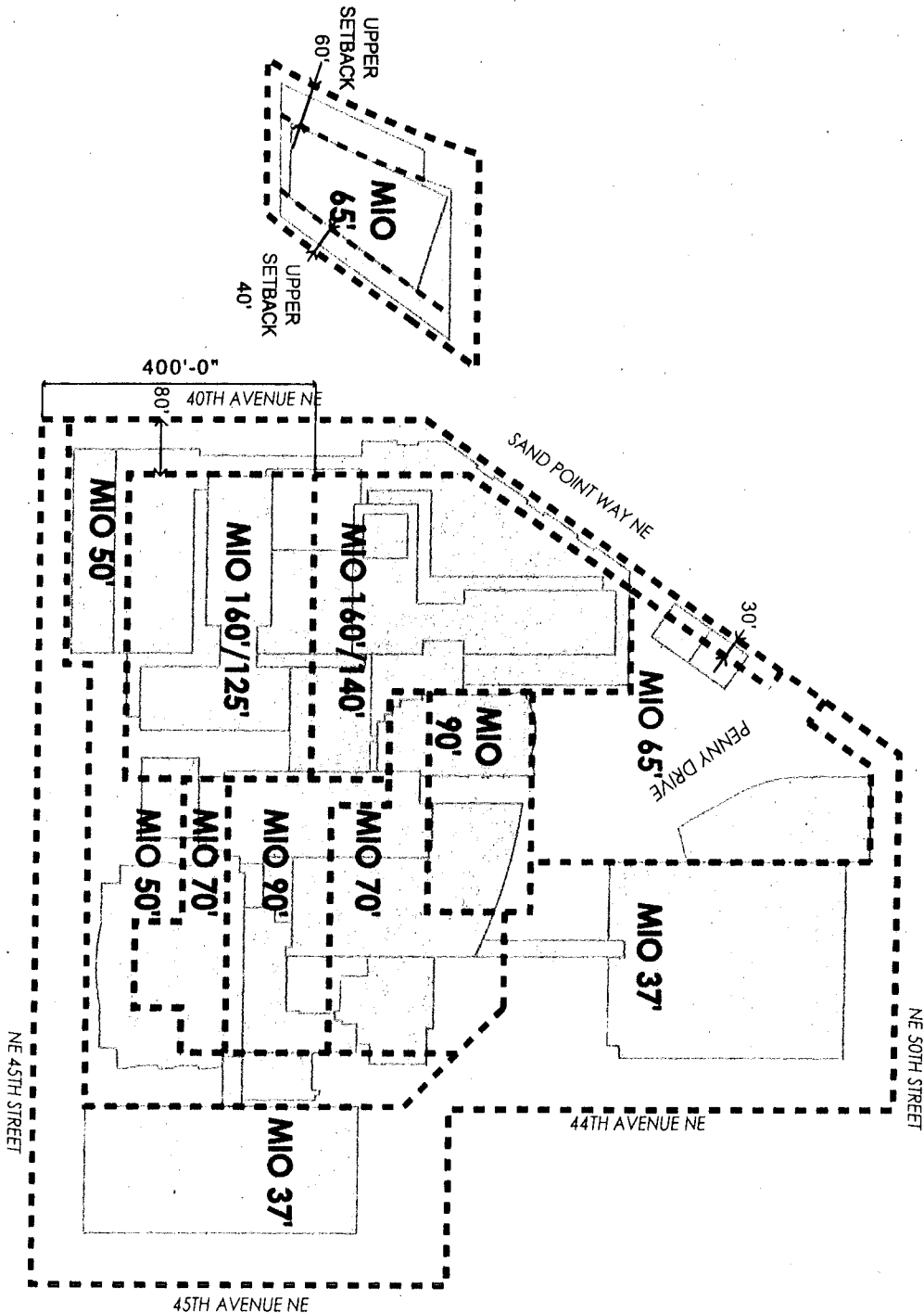
CONCERNING FURTHER REVIEW

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner's recommendation to consult appropriate Code sections to determine applicable rights and responsibilities.

Pursuant to SMC 23.76.054, any person substantially affected by a recommendation of the Hearing Examiner may submit an appeal of the recommendation in writing to the City Council. The appeal must be submitted within fourteen (14) calendar days following the date of the issuance of the recommendation of the Hearing Examiner, and be addressed to:

Seattle City Council
Planning, Land Use and Neighborhoods Committee
c/o Seattle City Clerk
600 Fourth Avenue, Floor 3
P.O. 94728
Seattle, WA 98124-4728

The appeal shall clearly identify specific objections to the Hearing Examiner's recommendation and specify the relief sought. Consult the City Council committee named above for further information on the Council review process.



City of Seattle Hearing Examiner

EXHIBIT

Appellant ☒ ADMITTED ☒
 Respondent ☐ DENIED ☐
 Department ☐ F 3088884
 EIT F# M11P-08-35/C F 3088884

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**Memorandum of Agreement Between the City of Seattle and Seattle Children's
Hospital
Pertaining to Replacement Housing**

Whereas, Seattle Children's Hospital ("Children's") must expand to meet the continued demand for high quality medical services for children;

Whereas, the Laurelon Terrace Condominiums are adjacent to Children's and represent a potential expansion area for Children's;

Whereas, Children's has reached an agreement with the Laurelon Terrace Condominium Owners to purchase the entire Laurelon Terrace site from the existing owners;

Whereas, Children's has applied to the City of Seattle Department of Planning and Development for approval of Children's Major Institution Master Plan in order to expand onto the Laurelon Terrace site;

Whereas, the City of Seattle, under Seattle Municipal Code (SMC) 23.34.124.B.7, requires "comparable replacement ... to maintain the housing stock of the City" when residential structures are demolished as a result of the expansion of Major Institution's boundaries;

Whereas, Children's proposes to demolish 136 units of housing at Laurelon Terrace Condominiums in order to expand its facilities to the Laurelon Terrace site;

Whereas Children's has submitted a Final Master Plan dated November 10, 2008, which sets forth the following housing policy:

"The livability of the neighborhoods near Children's is vitally important to Children's as well as the community. Children's is developing a housing policy and program to address the need for safe and affordable housing in northeast Seattle for a variety of reasons:

A safe home is necessary for the healthy development of every child. Children who experience homelessness or live in substandard housing are at greater risk of significant health problems.

As an employer, Children's is committed to attracting the very best talent, but is at a competitive disadvantage when employees must commute long distances to find housing they can afford because of the high cost of housing in Seattle.

Children's commitment to care for all children in the region who need our services, regardless of the family's ability to pay, means that families with limited means travel from throughout the region for care at Children's. Once in Seattle, families often experience significant difficulties securing housing so they can be near their child during their care at Children's.

Whereas, the City's Comprehensive Plan goals and policies place high emphasis on addressing the City's need for affordable housing and direct that at least 20% of expected housing growth be affordable to households earning up to 50% of median income, at least 17% of expected housing growth be affordable to households earning between 51% and 80% of median income, and at least 27% of expected housing growth be affordable to households earning between 81% and 120% of median income.

Whereas, Children's intends, through the commitments made in this Agreement, to meet and to the extent feasible and cost-effective, exceed the housing replacement obligations related to the displacement of the Laurelon Terrace residential units in a manner that is consistent with the City's housing policies.

Whereas, the Office of Housing intends on directing Children's contributions to housing projects which are not feasible without Children's assistance and to projects which are fully consistent with the housing policies of the City.

NOW, THEREFORE, this Memorandum of Agreement sets forth the proposed terms and conditions governing Children's replacement of the Laurelon Terrace housing, contingent upon approval of Children's requested Master Plan by the Seattle City Council;

1. Existing Laurelon Terrace Housing

Laurelon Terrace is a grouping of multifamily residential buildings constructed in 1948-1949 as rental apartments and converted to condominiums under the Horizontal Property Regimes Act in 1978. There are one hundred and thirty six (136) condominium units located on the Laurelon Terrace site (two units have been combined since 1978 to lower the number to 135): 70 one-bedroom units, 58 two-bedroom units, and 8 three-bedroom units. A substantial number of the units are currently being rented for residential use at the following rates: \$950-975 for one-bedroom units, \$1,050-1075 for two-bedroom units, and \$1,150-1175 for three-bedroom units. Values for units at Laurelon Terrace, based on the average sales prices and/or appraised values (land and improvements), ranged from \$244,000 for one-bedroom units, \$284,000 for two-bedroom units, and \$358,000 for three-bedroom units. Based upon the rental rates and unit values, the Laurelon Terrace Condominium units can be classified as affordable to persons whose incomes are at or below the median household income as established by Department of Housing and Urban Development guidelines for the Seattle Metropolitan Statistical Area.

2. Statement of Comparable Replacement Housing Obligation

(a) **Definition of Comparability.** Under SMC 23.34.124.B.7, demolition of residential structures to expand boundaries of major institutions is not permitted unless "comparable" replacement housing is proposed to maintain the City's housing stock. The City has historically interpreted "comparable" in this context to mean one-for-one replacement of housing that is similar in its location based on sector of the city, size based on number of bedrooms, and affordability based on income that is maintained for a minimum of 10 years.

(b) Prior History of Other Major Institutions. There are two examples of other major institutions whose expansion involved the displacement of existing residential housing.

(i) Harborview's MIMP, approved in 2000, allowed for the demolition of 64 housing units in order to accommodate its planned expansion. Condition 14 of the MIMP required "one-for-one" replacement of the units being demolished, with replacement units to be provided within the First Hill/Capitol Hill Urban Center boundary, with the units at substantially the same size, with the units to be affordable for a period of ten years, without the use of City funds, and requiring relocation assistance as provided by City regulations. Harborview found these original conditions unworkable and requested a change of Condition 14 of its MIMP. In April 2004, the original MIMP conditions for replacement housing were modified by a DPD minor amendment (MUP No. 2306410) to allow a reduction in the required number of replacement units from 64 to 50, to require that such units would remain affordable for a period of 50 years, to require a contribution from Harborview of \$1.5 million dollars to the City to be used in support of the Cabrini Senior Housing project, and to eliminate the restriction against the use of City funds. The Cabrini project included federal funds but not City funds. It is presumed that Harborview paid its share of the City's required relocation assistance (half of \$2,336 in 2004-2005) to those residents whose income levels made them eligible for such assistance.

(ii) Virginia Mason Medical Center's MIMP, approved by the City Council in 1994, required the demolition of two apartment buildings with approximately 80 market rate units in order to develop its east campus. Although it had no specific replacement housing obligation, Virginia Mason made an equity contribution of approximately \$300,000 to Housing Resources Group (HRG) to upgrade the 40-unit John Winthrop Apartments. In addition, Virginia Mason donated a half-block surface parking lot to HRG for the 97-unit Tate Mason House project and received in return the rights to structured parking in the project. There was no City requirement in the Master Plan decision that Virginia Mason replace any units on a one-to-one basis, and there was no specification of the amount of funds required to be paid by Virginia Mason for replacement housing. No funds were paid by Virginia Mason to the City. Virginia Mason followed the City's required relocation assistance program, offering approximately \$2,000 to those residents whose income levels made them eligible for such assistance.

(c) Children's Provision for Owners and Tenants of Laurelon Terrace. Children's provision for the owners (and qualifying tenants) of the Laurelon Terrace Condominiums has included mitigation in the form of direct compensation paid and to be paid to the owners (and tenants) of the Laurelon Terrace units. These payments are of three kinds: (i) commencing in October 2007, Children's agreed to purchase any Laurelon Terrace unit offered to it for sale through payment to the owner of the unit's then appraised fair market value, and to pay all costs of sale normally paid by the seller, including the real estate broker's fees, the real estate excise taxes, title insurance, escrow and other fees – as of April 30, 2009, Children's has purchased 101 units in this manner

and paid a total of over \$27 million; (ii) if Children's is granted approval of its proposed Master Plan and the expansion of its boundaries to allow hospital expansion onto the Laurelon Terrace site, Children's will pay each owner of a condominium unit a premium payment that will raise the total compensation to approximately 2.55 times the fair market value of each unit – this payment, in the aggregate for all 136 units, is \$93 million; (iii) for each individual unit that Children's has purchased and rented back to the original owner or rented to a third party who is not the former owner, Children's will also pay its share of relocation assistance to all qualifying tenants as defined by SMC Ch. 22.10.

(d) **Children's Additional Replacement Housing Obligation.** Based upon the requirements for comparability set forth in subsection (a) above, the precedents established by the City with respect to the replacement housing obligations imposed on major institutions as described in subsection (b), and the provisions for the extraordinary direct compensation paid by Children's to the owners and tenants as described in subsection (c), the Office of Housing has determined that Children's must contribute the sum of Five Million Dollars (\$5,000,000), in the manner set forth in this Agreement, in order to further satisfy its obligation for the replacement of the 136 Laurelon Terrace residential units.

3. Manner and Timing of Payment

Children's additional payment for replacement housing in the amount of Five Million Dollars must be paid directly to a replacement housing developer approved by the Office of Housing or placed into a designated account controlled by the Office of Housing prior to the issuance of the Certificate of Occupancy for Children's Phase 1 expansion under the approved Major Institution Master Plan. Children's payment shall be divided into two portions:

(a) Children's has already committed and shall be obliged by this Agreement to the payment of Six Hundred Thousand Dollars (\$600,000) for the first stage of Solid Ground's Phase II housing project. The first stage of construction will consist of 52 units for families, built on Site B, which is just south of Santos Place. The project will include 33 two bedroom, 14 three-bedroom and 5 four bedroom units affordable to households with incomes at or below median household income for the Seattle Metropolitan Area. Construction is expected to begin in the fall of 2009. This contribution by Children's, which is critical to the viability of the Solid Ground project, has been approved by the Office of Housing and qualifies as part of Children's replacement housing obligation.

(b) In addition, Children's will pay Four Million Four Hundred Thousand Dollars (\$4,400,000) to the Office of Housing. These funds will be made available to potential for-profit and nonprofit housing developers for the development of 84 or more additional replacement housing units through a competitive funding round either through the Office of Housing's bi-annual Notice of Funding Announcement and/or through a special Request for Proposal. Together, payment of the funds set forth in subsections (a) and (b)

will support the creation of 136 or more affordable and comparable replacement housing units.

4. Location of Replacement Housing

Replacement housing must be located in Northeast Seattle.

5. Net Gain of Units Required

Children's funds for replacement housing must be used to create a net gain of at least 136 housing units in northeast Seattle. These units, in the aggregate, must be of a size to provide a comparable number of bedrooms to the bedrooms in the Laurelon Terrace Condominiums. The funds may be used for new construction or they may be used to rehabilitate an existing building that is not currently in use as housing.

6. Eligible Replacement Housing

In order to provide for a full range of replacement housing options and leverage all available housing funds to maximize the number of units that can be developed, the Seattle Office of Housing will consider qualified for-profit and non-profit housing providers for the development of replacement housing on one or multiple sites, and is not prohibited from also contributing to the replacement housing projects developed in accordance with this Agreement.

7. Affordability of Replacement Housing

The replacement housing developed pursuant to this Agreement must be affordable to households whose incomes are no higher than median household income as established by Department of Housing and Urban Development guidelines for the Seattle Metropolitan Statistical Area.

8. Duration of Affordability for Replacement Housing

The replacement housing shall remain affordable for a term of at least fifty years. Office of Housing and the owner of the replacement housing must execute a regulatory agreement, which shall be recorded, in order to ensure the long-term affordability of the replacement housing units.

9. City Council Approval

This Agreement is predicated upon approval by the City Council of Children's proposed Final Master Plan.

DATED: _____

Thomas N. Hansen, M.D, CEO
Seattle Children's Hospital

Diane Sugimura, Director, Seattle
Department of Planning &
Development

Adrienne E. Quinn, Director, Seattle
Office of Housing